NO. 20194

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

LEWIS FOOD COMPANY, INC.,

Appellee.

APPELLANT'S OPENING BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

MANUEL L. REAL,
United States Attorney,
JOHN K. VAN DE KAMP,
Assistant United States Attorney,
Chief, Criminal Division,
J. BRIN SCHULMAN,
Assistant United States Attorney,
Assistant Chief, Criminal Division,
BURT S. PINES,
Assistant United States Attorney,

600 U. S. Court House,
312 North Spring Street,
Los Angeles, California 90012,

Attorneys for Appellant,
United States of America.

FILED
FEB 14 1966
WM. B. LUCK, CLERK

NO. 20194

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

LEWIS FOOD COMPANY, INC.,

Appellee.

APPELLANT'S OPENING BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

MANUEL L. REAL,
United States Attorney,
JOHN K. VAN DE KAMP,
Assistant United States Attorney,
Chief, Criminal Division,
J. BRIN SCHULMAN,
Assistant United States Attorney,
Assistant Chief, Criminal Division,
BURT S. PINES,
Assistant United States Attorney,

600 U. S. Court House,
312 North Spring Street,
Los Angeles, California 90012,

Attorneys for Appellant,
United States of America.

TOPICAL INDEX

TABLE OF AUTHORITIES

NO. 20194

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

vs.

LEWIS FOOD COMPANY, INC.,

Appellee.

APPELLANT'S OPENING BRIEF

I

JURISDICTIONAL STATEMENT

On July 17, 1963, the Federal Grand Jury for the Southern District of California, Central Division, returned an indictment, under Number 32456-CD, charging the defendant Lewis Food Company, Incorporated, with four violations of Title 18, United States Code, Section 610 [C. T. 2]. 1/ Pursuant to that statute, as well as Section 3231 of Title 18, the District Court acquired jurisdiction over the case.

On November 25, 1964, the Honorable C. Nils Tavares granted the defendant's motion to dismiss the indictment on the ground that it failed to state an offense under Section 610 of Title

---

1/ "C. T." refers to Clerk's Transcript of Record.

18, U.S.C. [C.T. 88; 236 F. Supp. 849 (D.C. Cal. 1964)]. On December 11, 1964, the Government filed a motion to vacate the order and to rehear the matter [C.T. 94], which motion was denied on December 21, 1964 [C.T. 150].

On January 20, 1965, a timely notice of appeal to the Supreme Court was filed [C.T. 153], in accordance with Rule 37a(2) of the Federal Rules of Criminal Procedure, Section 3731 of Title 18, U.S.C., and the doctrine of United States v. Healy, 376 U.S. 75 (1964).

On May 17, 1965, the Supreme Court granted a motion to transfer the case to this court, and the case was remanded pursuant to 18 U.S.C. Section 3731. United States v. Lewis Food Co., Inc., 381 U.S. 908 (1965). Based on the foregoing, and Title 28 U.S.C. Sections 1291 and 1294, this Court has jurisdiction to review the order of the court below.

II

STATEMENT OF THE CASE

Count One of the Indictment charges as follows:

"1. That at all times mentioned herein the defendant, LEWIS FOOD COMPANY, INCORPORATED, was a California Corporation, duly authorized and licensed under the laws of the State of California and doing business in said state;

"2. That on June 5, 1962, a primary

election was held in the State of California, in which candidates for the office of United States Senator and candidates for the office of member of the United States House of Representatives were to be selected;

"3. That on or about July 11, 1962, within the Central Division of the Southern District of California, defendant LEWIS FOOD COMPANY, INCORPORATED, did unlawfully make an expenditure in connection with the aforesaid primary election in that the defendant at the time and place aforesaid, pursuant to an agreement made before said election, did make payment to the Rockett Lauritsen Advertising Agency for the placement of an advertisement concerning candidates therein; that said advertisement was entitled "Important Notice to Voters," and, appeared in the following newspapers on the dates and for the amounts indicated, to wit: . . ."

Thereafter, the charge lists twelve California newspapers in which the advertisement was placed on June 4, 1962, the day before the primaries, and the cost of each publication. The amounts expended totaled $5,509.62. The remaining three counts duplicate the allegations of Count One but respectively cover expenditures by the defendant to the advertising firm on July 17, 1962, for advertisements published on June 4, 1962, in eight California newspapers, totaling $2,042.04; on July 24, 1962, for advertisements published on June 4, 1962, in fourteen California newspapers, totaling

$1,786.38; and on August 15, 1962, for advertisements published on June 4, 1962, in one California newspaper. All of the expenditures totaled $9,523.68.

A copy of the "Important Notice to Voters" was furnished in a Bill of Particulars filed on September 26, 1963 [C.T. 44].

The defendant's motion to dismiss the indictment was initially made on September 9, 1963, before the Honorable Albert Lee Stephens, Jr., United States District Judge, to whom the case was first assigned for trial [C.T. 9, et seq.]. The defendant contended that the pertinent statute was unconstitutional and that the indictment failed to state an offense. Following written opposition by the Government [C.T. 47 et seq.], Judge Stephens denied the motion by Order filed on October 3, 1963 [C.T. 106].

The inability of the jury to reach a verdict resulted in the declaration of a mistrial by Judge Stephens on October 23, 1963 [C.T. 100] The case was thereafter, on June 26, 1964, assigned to Judge Tavares for retrial (See Docket entries following Index to Clerk's Transcript of Proceedings).

On November 25, 1964, Judge Tavares entered an Order dismissing the indictment on the grounds that it failed to state an offense under Section 610 [C.T. 88; 236 F.Supp. 849, supra]. It is this Order which the Government now challenges on appeal.

III

SPECIFICATION OF ERROR

The Court below erred in dismissing the indictment on the ground that it failed to state an offense under 18 U. S. C. Section 610.

IV

PERTINENT STATUTE

Title 18, United States Code, Section 610:

"Contributions or expenditures by national banks, corporations or labor organizations

"It is unlawful for any national bank, or any corporation, organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senate or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political

convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

"For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purposes, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or condition of work."

elections for federal offices. [2/] In two landmark cases, United States v. C.I.O., 335 U.S. 106 (1948), and United States v. International Union United Automobile, Aircraft and Agricultural Implement Workers, 352 U.S. 567 (1957) [hereinafter cited as Auto Workers], the statute has come before the Supreme Court for interpretation of the word "expenditure." As the C.I.O. Court noted at 112,

> " 'Expenditure' as here used is not a word of art. It has no definitely defined meaning and the applicability of the word to prohibition of particular acts must be determined from the circumstances surrounding its employment.
>
> "The purpose of Congress is a dominant factor in determining meaning. There is no better key to a difficult problem of statutory construction than the law from which the challenged statute emerged. Remedial laws are to be interpreted in the light of previous experience and prior enactments. Nor, where doubt exists, should we disregard informed congressional discussion."

In each decision, the Supreme Court analyzed the legislative history of the statute, and proceeded to implement Congressional purpose.

2/ The pertinent parts of the statute are based on Public Law No. 36, Act of January 26, 1907 (Sen. Bill 4563), 34 Stat. 864 (limited to contributions by corporations); and Public Law 101, Amendment to Corrupt Practices Act, June 23, 1947 (House Bill 3020), 61 Stat. 136, 159 (added labor unions and word "expenditure").

In the C. I. O. case, supra, the labor organization and its president were indicted for violating Section 610 by reason of having distributed to union members or purchasers an issue of "The C. I. O. News," a weekly newspaper published by the union, which issue contained a statement from the president urging all members to vote for a certain condidate. The District Court dismissed the indictment on constitutional grounds. On review, the Supreme Court affirmed, holding that the indictment failed to state an offense. The Court felt that Congress did not intend to bar by Section 610 a trade journal, house organ, or newspaper regularly published by a labor union or corporation, from expressing its views on candidates to its members or shareholders.

In the Auto Workers case, supra, the Court upheld the sufficiency of an indictment which charged a labor organization with using union dues to sponsor a commercial television broadcast which urged and endorsed the selection of certain candidates, and included expressions of political advocacy intended to influence the electorate. The Court, distinguishing the C. I. O. case, construed the statute to prohibit "the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." United States v. Auto Workers, at 567 [Emphasis Added]. This then is the standard which must be employed in evaluating the "Important Notice to Voters" advertisement now before this Court on this appeal.

An examination of the subject advertisement clearly demonstrates that it meets the Supreme Court's criterion. The

publication occurred the day before the primary election. Its coverage was statewide in scope. The publication was directed to "Voters" in particular, rather than the general reading public. Its official-looking character and pretensions to state only the candidates' "voting records," in the interests of "public service," would lead many people to favor the high-ranked candidates and to vote against the lower ones.

That this advertisement attempts to influence the public how to vote is further evidenced by the command: "Vote for the candidates whose voting record indicates that they believe in those principles" (i.e. of "our free enterprise system, our constitutional government and freedom under God.") [Emphasis Added]. The advertisement further states:

> "If you as voters do not like their voting record, then you have a right and privilege to vote a new candidate in their place . . .
>
> * * *
>
> "The index is an invaluable guide for the voter who wants to cast his ballot with intelligence and discrimination, in other words, for the voter who wants to know more about the candidate than just their party labels."

The listing rates the candidates as to how they voted, not on any specific issues, not on specific bills, but on what is loosely labeled "constitutional principles." What term could be more

encompassing? More appealing to every voter? Who could turn down a man who voted "100%" in accordance with the constitution? In the very words of the advertisement, "100% is perfect." By contrast consider the opprobrium attached to a candidate who never once upheld that sacred document. There can be no doubt that this advertisement was but a patent attempt to laude certain incumbents while disfavoring others, and so influence the voting public to vote for the preferred candidate.

Note further that the listing rates candidates according to party affiliation. Of the thirty members of the House of Representatives, the sixteen Democrats are all rated "5%" or "0%", ten being in the "0%" category. Of the fourteen Republicans, two are listed at "18%" and "30%", with the remaining twelve averaging above "75%", all being at least "59%" or greater. With a few exceptions, this same disparity between the two parties is carried over into the rating of the candidates for other offices as well. Again, we see plain evidence of an attempt to do exactly what the statute prohibits: advocate the position of one political party over another.

The advertisement purports to be only a statement of voting records. But examining it with a "common sense appreciation of the realities," McKinney v. United States, 172 F.2d 781 (9th Cir. 1949), we must conclude otherwise. The basis of the index is not specified. No particular issue or bill is identified. Rather the advertisement is a clear-cut attempt to pass off as a voting record, a biased, one-sided, incomplete analysis calculated to

sway and influence virtually all of the voters in the State of California to vote in the manner in which they were persuaded by the makers of the popular "Dr. Ross Pet Food line," to wit, the defendant.

But at minimum, whether the expenditure constitutes "active electioneering" or is "in the same category as the records of candidates on economic issues" [C. T. 91], is a question of fact for the jury to resolve under proper instructions. Certainly, this is what the Supreme Court had in mind in the dicta alluded to by the court below and what Congress intended in enacting Section 610.

In the Auto Workers case, supra, at 592, the Court stated:

> "Allegations of the indictment hypothetically framed to elicit a ruling from this Court or based upon misunderstanding of the facts may not survive the test of proof. For example, was the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis? Did the broadcast reach the public at large or only those affiliated with appellee? Did it constitute active electioneering or simply state the record of particular candidates on economic issues? Did the union sponsor the broadcast with the intent to affect the results of the election? As Senator Taft repeatedly recognized in the debate on § 304, prosecutions under

the Act may present difficult questions of fact. See supra, pp. 585-587, n. 1. We suggest the possibility of such questions, not to imply answers to problems of statutory construction, but merely to indicate the covert issues that may be involved in this case." [Emphasis Added].

Underlying the Supreme Court's reference to "voting records" is the following discussion on the Senate floor:

"MR. BALL. I do not think there is a single thing in the bill which prohibits any union or corporation or anyone else from printing any public official's voting record. That is not a campaign for or against a candidate. It is simply the printing of public information.

"MR. TAFT. I was thinking of the way most of the labor organizations are on record. They do not, as a rule, merely print facts.

* * *

"MR. PEPPER. I wish to ask the Senator from Ohio whether he agrees with the Senator from Minnesota [Mr. Ball], who just expressed the opinion that if a labor organization used its funds to disseminate the voting record of a candidate for office, during the time of the campaign, that would not be unlawful. Does the Senator from Ohio agree with

the Senator from Minnesota that that would not be unlawful, because it would not be an expenditure in connection with an election in which certain candidates or political parties are involved?

"MR. TAFT. I think it would depend upon all the circumstances in the case. If it was merely a bare statement of actual facts and simply direct quotations of what the man had said in the course of certain speeches on certain subjects, and was not colored in any way, I would rather agree with the Senator from Minnesota. But I think it would depend, in each case, on the character of the publication.

"MR. PEPPER. Of course, the language is 'in connection with.' The provision does not contain any statement as to whether the statement is colored or not. The words simply are 'any expenditure in connection with an election.' I do not see how the Senator could say that the publication of a voting record, in the midst of a campaign, was not an expenditure in the midst of an election.

"MR. TAFT. That is not a very practical question, because no one would do just that. Either it is an argument for him or against him, or it is not. * * *" [Emphasis Added].

93 Cong. Rec. 6446-47, June 5, 1947.

Both Congress and the Supreme Court recognized that the mere label, "Voting Record," does not free the publication from the statutes' proscription. Rather, it is a question for the fact-finder whether the publication is colored or not. In the case at hand, considering the nature of the expenditures in question, it was most certainly error for the lower court to foreclose forever the issue of fact and rule as a matter of law that the expenditure was a lawful one.

The case of United States v. Pennell, 144 F. Supp. 317 (N. D. Cal. 1956), is not unlike the situation at hand. There, the indictment charged the interstate communication of a threat to injure a Mrs. Gloria Pennell in violation of 18 U. S. C. Section 875(c). By bill of particulars, the Government furnished a copy of the letter. In pertinent part it stated:

> " . . . I shall in the very near future be in Sacramento to deal with you and your cohorts. I dislike very much having to deal with you and your men in this manner - but there seems to be no other way * * * Believe me, Baby, this is serious now. . . ."

The defendant moved to dismiss, arguing that the words, "to deal with" do not constitute a threat. In denying the motion the Court said at 319:

> " . . . It cannot be said as a matter of law that there is no threat to injure the person of Mrs. Gloria Pennell. Whether these words constitute a threat . . . is a question of fact for the trier of

the facts, and not a question to be determined by this Court at this time on a motion to dismiss."

It should also be noted that Congress added the word "expenditure" as a remedial measure, to "plug the existing loophole" in the law, see United States v. Auto Workers, supra, at 581-82, because of the numerous indirect contributions and expenses on candidates' behalf revealed by committee investigations. To now hold, as did the lower court, that the "Important Notice to Voters" lies outside the statutes' purview, defeats congressional purpose in amending the statute and permits easy evasion of the law.

B. THE CHARGE OF THE INDICTMENT THAT THE DEFENDANT CORPORATION "DID UNLAWFULLY MAKE AN EXPENDITURE" IN CONNECTION WITH A PRIMARY ELECTION SUFFICIENTLY STATES AN OFFENSE, WITHOUT FURTHER ALLEGING THAT GENERAL CORPORATE FUNDS WERE USED, AND THAT THE EXPENDITURE WAS CONTRARY TO THE SHAREHOLDERS' WISHES.

Besides holding the advertisement to be a voting record and consequently beyond the scope of Section 610, the lower court also ruled that the indictment was fatally defective because it failed to allege that the expenditure came from "general funds" of the corporation and that the funds were used without the consent of the shareholders. Again the lower court was in error.

The instant indictment incorporates the wording of the statute by alleging that the defendant "corporation" did unlawfully "make" an "expenditure in connection with" an election. Thus the charging instrument meets the well-established view that indictments pleaded in the language of the statute are sufficient against a motion to dismiss. See Robison v. United States, 329 F. 2d 156 (9th Cir. 1964), cert. denied, 379 U.S. 859; Rood v. United States, 340 F. 2d 506 (8th Cir. 1965); United States v. Spada, 331 F. 2d 995 (2nd Cir. 1964); Worthy v. United States, 328 F. 2d 386 (5th Cir. 1964); Forms 1 - 11, Appendix, Federal Rules of Criminal Procedure.

Furthermore, it is quite obvious that "general funds" of the corporation are intended to be covered by the indictment. How

else could the expenditure be that of the corporation? If the funds were provided independently by some or all of the shareholders, it is not the corporation making the expenditure, but the shareholders as individuals.

Admittedly, whether the corporation's general funds were employed or not is a crucial consideration. But this is a question of fact, to be resolved like all other such questions rather than on a motion to dismiss. When the Supreme Court asked in the Auto Workers case, supra, at 592, "[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis?", the Court was referring to "the test of proof," and "questions of fact."

Thus, if the Government were unable to prove that corporation funds were used, the trier of fact would be justified in granting an acquittal, just as it would if the Government failed to prove that the defendant was a corporation, or that a primary election was held, or that the advertisement was actually published. But all these are fact issues, and the lower court erred in deciding one of them as a matter of law.

We submit further that whether or not the shareholders consented to the defendant's expenditure is completely immaterial. "Any corporation whatever" is covered by Section 610, not merely a corporation acting without its owners' authority. To now add such an element to the offense violates cardinal rules of statutory construction:

> "The judicial function to be exercised in construing a statute is limited to ascertaining the

intention of the legislature therein expressed. Ebert v. Poston, 266 U. S. 548, 45 S. Ct. 188, 69 L. Ed. 435. Congressional intent is sought primarily in the language of the statute, and where this language expresses an intention reasonably intelligible and plain, it must be accepted without modification by resort to construction or conjecture. Thompson v. United States, 246 U. S. 547, 38 S. Ct. 349, 62 L. Ed. 876, and Gorin v. United States, 9 Cir., 111 F. 2d 712. There is no need for resort to the rules of interpretation or construction when the language of the statute is plain and free from ambiguity. Osaka Shosen Kaisha Line v. United States, 300 U. S. 98, 57 S. Ct. 356, 81 L. Ed. 532; Adams Express Co. v. Commonwealth of Kentucky, 238 U. S. 190, 35 S. Ct. 824, 59 L. Ed. 1267; Athens Stove Works v. Fleming, supra, and Braffith v. People of Virgin Islands, supra . . . .

Courts are not at liberty to amend or repeal a statute under a guise of construction, Osaka Shosen Kaisha Line v. United States, supra, and Helvering v. City Bank Farmers Trust Co., 296 U. S. 85, 56 S. Ct. 70, 80 L. Ed. 62, nor is it within the judicial function of a court to supply omissions in a statute, even though that which was omitted may have been omitted by oversight or inadvertence. Wallace v.

Cutten, 298 U. S. 229, 56 S. Ct. 753, 80 L. Ed. 1157; Iselin v. United States, 270 U. S. 245, 46 S. Ct. 248, 70 L. Ed. 566; and Ebert v. Poston, supra. It is not for a court to extend the scope of a statute beyond the point where Congress indicated it would stop. 62 Cases, More or Less, Each Containing Six Jars of Jam v. United States, 340 U. S. 593, 71 S. Ct. 515, 95 L. Ed. 566." (Emphasis added).

In re Shear, 139 F. Supp. 217, 220-21 N. D. Cal. 1956.

Section 610 is based upon Public Law No. 36, of January 26, 1907, 34 Stat. 864. That law like the present one prohibited contributions by "any corporation whatever." The legislative history of the early enactment provides further evidence of a congressional intent to cover all corporations. President Roosevelt in his annual message to Congress stated:

"I again recommend a law prohibiting all corporations from contributing to the campaign expenses of any party. Such a bill has already passed one House of Congress. Let individuals contribute as they desire; but let us prohibit in effective fashion all corporations from making contributions for any political purpose directly or indirectly."

41 Cong. Rec. 22

On the floor of Congress the measure was explained thusly:

"Mr. Gaines: . . . 'The second provision of the bill makes it unlawful for any corporation whatever . . . unlawful for any corporation of any character to make a money contribution . . . . '

* * *

Mr. Rucker: . . . 'The second clause prohibits corporations of any character from making money contributions . . . . ' " (Emphasis added)

41 Cong. Rec. 1452.

Note further that by this act Congress sought to curb the powerful and often corrupting influence of corporations over elections. See United States v. Auto Workers at 570-571. In view of this purpose, there would be no reason at all to exempt some corporations simply because the shareholders consented to the contributions. Thus, it is apparent that the District Court's ruling annuls both the expectations and purpose of Congress as well as its statutory mandate.

The Auto Workers case provides even further authority for rejecting the element of consent suggested by the court below. The indictment there contained no allegation that the expenditure of union funds was contrary to the members' authority. Nevertheless, the indictment was found sufficient by the high court. See pp. 584-85.

In the only decisions touching on the matter of consent, United States v. Painters Local Union, 172 F. 2d 854 (2nd Cir. 1949), and United States v. Anchorage Central Labor Council, 193 F. Supp. 504 (D. Alaska 1961), the matter was raised in the

courts' summary of the facts, rather than having been part of the indictment. And in each case, the ultimate decision of the court was based on other grounds.

In the Painters Local case, supra, a labor union was charged with making unlawful campaign expenditures totalling $143.64. In summarizing the facts the court noted that the expenditure was authorized at a membership meeting. But the decision dismissing the indictment rested in large part upon the court's view of the expenditure as "trifling" and the fact that the press and radio were normal means of communicating the union's views to its members.

In the Anchorage case, supra, the defendant was an association of some twenty-six labor unions. The court observed that the expenditures in question came from a "TV" fund made up by contributions from the several unions. Each union decided by vote of its membership whether they would contribute. The court, in granting a judgment of acquittal, held that the expenditure was not paid for by general association funds but rather from funds obtained on a "voluntary basis". The court also based its ruling on the fact that the media used in the broadcast was regularly used by the union in communicating to its members.

It is clear then that neither of these cases lend much support to the proposition advanced below, that "general funds of the stockholders so used with the consent of the stockholders . . . do not come within the purview of the statute." Indeed, as already indicated, such view is contrary to the express language of the statute, the intent of Congress, and the ruling of the Supreme Court in the Auto Workers case.

VI

CONCLUSION

Based on the foregoing, we submit that the lower court erred in dismissing the indictment and its decision should be reversed.

Respectfully submitted,

MANUEL L. REAL,
United States Attorney,

JOHN K. VAN DE KAMP,
Assistant United States Attorney,
Chief, Criminal Division,

J. BRIN SCHULMAN,
Assistant United States Attorney,
Assistant Chief, Criminal Division,

BURT S. PINES,
Assistant United States Attorney,

Attorneys for Appellant,
United States of America.

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Burt Pines

BURT PINES